

BEFORE THE FEDERAL ELECTION COMMISSION Aug 23 11 07 AM '99

In the Matter of)

Embassy of India and Davendra Singh)

) MUR 4583

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 9, 1998, the Commission found probable cause to believe that the Embassy of India and Davendra Singh knowingly and willfully violated 2 U.S.C. §§ 441e and 441f, in connection with the making of reimbursed federal campaign contributions from foreign national sources. In lieu of Post-Probable Cause Conciliation under 2 U.S.C. § 437g(a)(4)(A)(i), the Commission referred this matter to the United States Department of Justice ("DOJ") for its consideration pursuant to 2 U.S.C. § 437g(a)(5)(C). By letter dated July 20, 1999, DOJ advised this Office that it had closed the matter "without further investigation or prosecution."

Attachment 1.

II. DISCUSSION

In light of DOJ's decision, the Commission has the alternatives of pursuing this matter further into Post-Probable Cause Conciliation and possible civil suit or take no further action, send an admonishment letter, and close the file.

In the General Counsel's Report dated November 3, 1998, pages 4-8, this Office enumerated the challenges and difficulties the Commission would face if it pursued this matter, recommending instead that the matter be referred to DOJ. Another consideration is the time that

has elapsed since the activities at issue took place (1994).¹ Although this matter presents the Commission with a rare opportunity to pursue a foreign government for aggravated violations of Sections 441e and 441f into possible litigation and the raising of legal issues involving the Foreign Sovereign Immunities Act, for the reasons set out in the GC Report, this Office recommends that the Commission not pursue this matter beyond the probable cause to believe finding. Accordingly, this Office recommends that the Commission take no further action as to the Embassy of India and Davendra Singh, send an admonishment letter, and close the file.

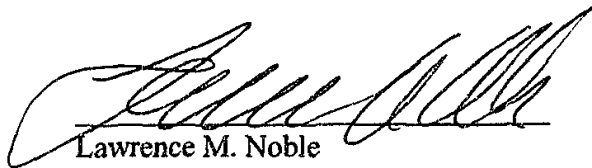
As with previous notifications and correspondence to the Embassy of India, this Office intends to channel the closing admonishment letter to the Embassy of India through the State Department. In addition, because the State Department has indicated that some of the documents it provided to this Office are not publicly available absent the consent of both parties to the communications and should not be further disseminated, this Office will consult informally with the State Department before putting any documents on the public record.

¹ The transactions at issue took place September - November of 1994. The Commission initiated MURs 4582 & 4583 after Lalit Gadhia's guilty plea in the summer of 1996, it closed MUR 4582 in March 1998, and as noted above, the Commission found probable cause to believe and referred MUR 4583 to the Department of Justice in November 1998. The statute of limitations at 28 U.S.C. § 2462 would bar enforcement of a civil penalty unless the Commission filed suit within the next 2-3 months, although if not, the Commission might nonetheless be able to obtain injunctive relief for violations. See United States v. Banks, 115 F.3d 916, 919 & n.6 (11th Cir. 1997); FEC v. The Christian Coalition, 965 F. Supp. 66 (D.D.C. 1997); FEC v. NRSC, 877 F. Supp. 15, 20-21 (D.D.C. 1995); but see FEC v. Williams, 104 F. 3d 237 (9th Cir. 1996), cert. denied, 118 S.Ct. 600 (U.S. Dec. 8, 1997) and FEC v. National Right to Work Committee, 916 F. Supp. 10 (D.D.C. 1996) (Section 2462 bars the Commission from obtaining a civil penalty or injunctive relief for activity that occurred prior to five years of the violation).

III. RECOMMENDATIONS

1. Take no further action and send an admonishment letter to the Embassy of India and Davendra Singh.
2. Close the file.
3. Approve the appropriate letters.

8/19/99
Date


Lawrence M. Noble
General Counsel

Attachment

1. Letter from DOJ, dated July 20, 1999.

Staff Assigned: Dominique Dillenseger

2010-10-10 10:00:00